

**REMARKS/ARGUMENTS**

**102(b) Rejections**

The Examiner has rejected claims 1-4 and 6-19 under 35 U.S.C. §102(b) as anticipated by Giacona, III (U.S. Pat. Pub. No. 2005/0092789). Applicant respectfully traverses.

Applicant has amended independent claims 1 and 14 to more clearly define that the Applicant's invention comprises an upper section and a lower section having material that is uniform in diameter. Support is found in the Applicant's original specification on at least page 10, lines 15-16, and is shown in at least original FIGS. 1-2.

Applicant respectfully asserts that Giacona '789 does not comprise each and every element present in the Applicant's invention, and thus does not anticipate the Applicant's invention. The Applicant's invention as amended comprises an upper section and the lower section, wherein the upper section and the lower section comprise material that is uniform in diameter. Unlike the Applicant's invention, Giacona '789 teaches a bottled drink carrier that comprises an upper strap and a lower strap, wherein the upper strap is thicker than the lower strap, as Giacona '789 specifically states, the upper strap "is between about one and three inches in maximum width" and the lower strap "comprises a thickness of about 1/32 to 1/4 of an inch." See Giacona '789 paragraphs [0107] and [0110], and Giacona '789 FIG. 1. The Applicant has amended independent claims 1 and 14 to more clearly define that Applicant's invention is of uniform diameter, as specifically referenced in the Applicant's original specification on at least page 10, lines 15-16, and as shown in at least Applicant's original FIGS. 1-2. Accordingly, the Applicant's invention distinguishes over the reference.

As set forth in W.L. Gore and Associates v. Garlock, Inc., "anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration". W.L. Gore and Associates v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1984). Further, "each and every element of the claimed invention" must be "arranged

as in the claim". Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452 (Fed. Cir. 1984). Here, each and every element of the Applicant's invention is not taught by the reference, and thus the Examiner's *prima facie* case for rejection is lacking. Accordingly, the Examiner's rejection of Applicant's claims 1 and 14 is traversed and the rejection of all claims depending from claims 1 and 14 is moot.

### **103(a) Rejections**

The Examiner has rejected claim 5 under 35 U.S.C. §103(a) as unpatentable over Giacona '789. Applicant respectfully traverses.

In view of Applicant's amendment to claim 1, the Examiner's rejection of claim 5, which depends from claim 1, is now moot.

The Examiner has rejected claims 20 and 22 under 35 U.S.C. §103(a) as unpatentable over Giacona '789 in view of Millen (U.S. Pat. No. 6,129,709). Applicant respectfully traverses.

As noted hereinabove, Applicant has amended claim 14 to more clearly define that the Applicant's invention comprises at least two segments having material that is uniform in diameter. Further, Applicant respectfully points out to the Examiner that Giacona '789 teaches a drink carrier that comprises an upper strap and a lower strap, wherein the upper strap is thicker than the lower strap. Such a configuration differs from the uniform diameter upper strap/lower strap configuration taught by Applicant's claim 14, from which claim 20 depends. Thus, Applicant's claim 20 distinguishes over Giacona '789. Further, even if Giacona '789 was combined with Millen '709, such a combination does not result in Applicant's invention and thus does not render Applicant's claim 20 obvious.

Additionally, Applicant has amended claim 22 to more clearly define that the length of material joined together comprises two segments, wherein the two segments are

uniform in diameter. Such an amendment is supported in the Applicant's original specification at page 13, lines 11-13, and is clearly shown in Applicant's original FIG. 3. Thus, Applicant's claim 22 distinguishes over Giacona '789. Further, even if Giacona '789 was combined with Millen '709, such a combination would not result in Applicant's invention and thus the combination does not render Applicant's claim 22 obvious, and the Examiner's rejection of claim 22 is now traversed.

#### **Other Claim Amendments**

Applicant has amended withdrawn claim 21 to more clearly define that the Applicant's invention comprises a top section and a bottom section, wherein the top section and the bottom section comprises material that is uniform in diameter. Support is found in the Applicant's original specification at least on page 13, lines 11-13, and is shown in at least Applicant's original FIG. 3.

#### **CONCLUSION**

All amendments are as to form only. No new matter has been added. Applicant respectfully believes that that the application is now in condition for allowance. Should the Examiner have any questions regarding this submission, he is invited to contact the undersigned counsel at the telephone number below.

Respectfully submitted, this 6th day of April, 2010,

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